

RAS 11691

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

DOCKETED 05/31/06

SERVED 05/31/06

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman
Dr. Paul B. Abramson
Dr. Charles N. Kelber

In the Matter of

LOUISIANA ENERGY SERVICES, L.P.

(National Enrichment Facility)

Docket No. 70-3103-ML

ASLBP No. 04-826-01-ML

May 31, 2006

MEMORANDUM

(Notice Regarding Issuance of
Partial Initial Decision on Safety-Related Contentions)

By its third partial initial decision issued this date in this proceeding regarding the application of Louisiana Energy Services, L.P., (LES) seeking a license to construct and operate a uranium enrichment facility, designated the National Enrichment Facility (NEF), near Eunice, New Mexico, the Licensing Board has ruled on three contentions jointly proffered by intervenors Nuclear Information and Resource Service and Public Citizen (NIRS/PC), set forth in NIRS/PC Environmental Contention (EC)-3/Technical Contention (TC)-1 – Depleted Uranium Hexafluoride [(UF₆)] Storage and Disposal; NIRS/PC EC-5/TC-2 – Decommissioning Costs; and NIRS/PC EC-6/TC-3 – Costs of Management and Disposal of Depleted UF₆. Each of these admitted contentions, which were the subject of October 2005 and February 2006 evidentiary hearings, challenges the adequacy of certain safety-related (as opposed to strictly environmental) aspects of the LES application, including its Safety Analysis Report.¹ The

¹ Although each of the contentions we address in that partial initial decision were originally denominated environmental/technical contentions, the issues actually litigated relative
(continued...)

Board's decision, however, currently is being treated as not subject to public release pending review of possible proprietary information used in the decision. Accordingly, copies of the decision are being provided at this juncture only to the parties by overnight delivery/express mail (or in the case of the NRC staff, by internal agency mail), and should be handled by those parties in accordance with the May 21, 2004 protective order previously entered in this proceeding.

In crafting its decision, the Board has attempted to minimize the use of possible proprietary information. Additionally, this date the Board is providing to the parties by overnight/express mail (or in the case of the staff, by internal agency mail) a proposed redacted version of the decision and has requested that on or before Tuesday, June 6, 2006, LES, NIRS/PC, and the staff provide a joint report outlining any agreements or disagreements regarding the proposed redactions as well as specifying any additional portions of the opinion that are claimed to contain proprietary information. Once the Board has received this joint report, and any responses challenging the proposed or claimed redactions, it will make a determination about what portions of the decision must be withheld. The parties will be advised of the Board's ruling in this regard.

Additionally, given the delay in the public availability of this decision, the Board provides the following summary of its partial initial decision rulings, albeit with the caveat that this summary (like the summaries and headnotes that accompany the Board's published decisions) has no legal significance:

The Board finds that, in the face of the NIRS/PC safety-related challenges to the LES application reflected in (1) contention NIRS/PC EC-3/TC-1, which challenges LES's private deconversion strategy; (2) those portions of contention NIRS/PC EC-5/TC-2 that challenge the adequacy of LES's transportation cost

¹(...continued)
to those contentions focused primarily on safety and technical matters.

estimate associated with the deconversion and disposal of depleted uranium (DU) tails generated by the NEF and the contingency factor applied to its overall dispositioning cost estimate; and (3) paragraph E (calcium fluoride (CaF₂) disposal costs), paragraph G (plausibility of LES's private deconversion strategy), and paragraph I (plausibility of engineered trench disposal) of contention NIRS/PC EC-6/TC-3, LES has carried its burden of proof to demonstrate the adequacy of that application in accordance with 10 C.F.R. §§ 30.35, 40.36, and 70.25, and the relevant guidance in NUREG-1757, "Consolidated NMSS Decommissioning Guidance."

Regarding the challenges to (1) LES's cost estimate for private sector deconversion of DU from the NEF as set forth in contention NIRS/PC EC-5/TC-2 and paragraph G of NIRS/PC EC-6/TC-3; and (2) its cost estimate for disposal of NEF-generated DU as set forth in contention NIRS/PC EC-5/TC-2 and paragraph I of contention NIRS/PC EC-6/TC-3, the Board finds that LES has failed to carry its burden to demonstrate the adequacy of those cost estimates in accordance with 10 C.F.R. §§ 30.35, 40.36, and 70.25, and the relevant guidance in NUREG-1757.

As a consequence, LES having failed to provide a comprehensive cost estimate regarding disposition of NEF-related DU tailings, the Board concludes that for purposes of fulfilling the financial assurance/decommissioning funding plan requirements of 10 C.F.R. §§ 30.35, 40.36, and 70.25, and the relevant guidance in NUREG-1757, agency licensing of the NEF facility, including ensuring that the applicant has in place sufficient funding mechanisms to assure facility decommissioning, must be based in toto on the cost estimates that would be applicable under the plausible strategy associated with the United States Department of Energy providing DU dispositioning services in accordance with section 3113 of the USEC Privatization Act, 42 U.S.C. § 2297h-11. Those costs estimates, which were not at issue in the contested portion of this proceeding, will be one of the subjects of the Board's mandatory hearing-related partial initial decision.

Although this Board ruling resolves all contested matters before the Board in connection with the December 2003 application of LES for authorization to construct and operate the NEF, NRC staff issuance of a 10 C.F.R. Part 70 license authorizing the construction and operation of that facility must abide,

among other things, the issuance by this Board of its partial initial decision regarding the uncontested, mandatory hearing portion of this proceeding.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD²

/RA/

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

May 31, 2006

² Copies of this memorandum were sent this date by Internet e-mail transmission to counsel for (1) applicant LES; (2) intervenors NIRS/PC; and (3) the staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
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LOUISIANA ENERGY SERVICES, L.P.) Docket No. 70-3103-ML
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(National Enrichment Facility))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM (NOTICE REGARDING ISSUANCE OF PARTIAL INITIAL DECISION ON SAFETY-RELATED CONTENTIONS) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

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Docket No. 70-3103-ML
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PARTIAL INITIAL DECISION ON SAFETY-RELATED CONTENTIONS)

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 31st day of May 2006